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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 MAX MORRIS HARARI, individually  
12 and on behalf of all others similarly  
13 situated,

14 Plaintiff,

15 v.

16 PRICESMART, INC., JOSE LUIS  
17 LAPARTE, JOHN M. HEFFNER, and  
18 MAARTEN O. JAGER,

Defendants.

Case No.: 19-CV-958 JLS (LL)

**ORDER (1) GRANTING MOTION  
FOR APPOINTMENT AS LEAD  
PLAINTIFF, AND (2) APPROVING  
CHOICE OF COUNSEL**

(ECF No. 4)

19 Presently before the Court is Movant Public Employees Retirement Association of  
20 New Mexico's ("PERA") Motion for Appointment as Lead Plaintiff and Approval of  
21 Choice of Counsel ("Mot.," ECF No. 4). Also before the Court is PERA's Response in  
22 Support of the Motion ("Resp.," ECF No. 21). Having considered PERA's arguments and  
23 the law, the Court **GRANTS** the Motion.

24 **BACKGROUND**

25 The present case is a putative securities class action that arises from allegations of  
26 false and misleading statements in violation of federal securities laws. Defendant  
27 PriceSmart, a Delaware Corporation with its main office in San Diego, CA, owns and  
28 operates membership-shopping warehouse clubs in Central America, the Caribbean, and

1 Colombia. Complaint (“Compl.”) ¶¶ 2, 12, ECF No. 1. PERA manages approximately  
2 \$15.4 billion in assets for New Mexico state, county, and municipal employees, retirees,  
3 and beneficiaries. Mot. at 2.

4 Plaintiffs allege that, between October 26, 2017, and October 25, 2018 (the “class  
5 period”), PriceSmart “made materially false and/or misleading statements, as well as failed  
6 to disclose material adverse facts about the Company’s business, operations, and  
7 prospects.” Compl. ¶ 5. On October 25, 2018, PriceSmart announced disappointing  
8 financial results for 2018, the resignation of its CEO, and that certain assets had been  
9 misidentified in prior financial statements. *Id.* ¶ 24. “On this news, the Company’s share  
10 price fell \$12.41, or more than 15%, to close at \$69.16 per share on October 26, 2018, on  
11 unusually heavy trading volume.” *Id.* ¶ 25. Plaintiffs allege that, “[a]s a result of  
12 Defendants’ wrongful acts and omissions, and the precipitous decline in the market value  
13 of the Company’s securities, . . . Class members have suffered significant losses and  
14 damages.” *Id.* ¶ 6.

15 On May 22, 2019, Plaintiff Max Morris Harari brought this action on behalf of the  
16 proposed class, consisting of “all persons and entities that purchased or otherwise acquired  
17 PriceSmart securities” during the class period. *Id.* ¶ 1. On July 22, 2019, PERA filed this  
18 Motion seeking to be named lead plaintiff and have its choice of counsel approved. *See*  
19 *generally* Mot.

## 20 LEGAL STANDARDS

### 21 I. Motion to Appoint Lead Plaintiff

22 The Private Securities Litigation Reform Act (“PSLRA”) governs the selection of a  
23 lead plaintiff in private securities class actions. 15 U.S.C. § 78u-4. There is a three-step  
24 process in determining the lead plaintiff under the PSLRA. *In re Cavanaugh*, 306 F.3d  
25 726, 729 (9th Cir. 2002). First, the plaintiff that is first to file an action governed by the  
26 PSLRA must publicize the pendency of the action, the claims made, and the purported class  
27 period “in a widely circulated national business-oriented publication or wire service.” 15  
28 U.S.C. § 78u-4(a)(3)(A)(i)(I). This notice must also alert the public that “any member of

1 the purported class may move the court to serve as lead plaintiff.” 15 U.S.C. § 78u-  
2 4(a)(3)(A)(i)(II).

3 Next, the court must select the presumptive lead plaintiff. *See In re Cavanaugh*, 306  
4 F.3d at 729–30 (citing 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I)). To determine the presumptive  
5 lead plaintiff, “the district court must compare the financial stakes of the various plaintiffs  
6 and determine which one has the most to gain from the lawsuit.” *Id.* at 730 (footnote  
7 omitted). “[A]pproximate losses in the subject securities is the preferred measure” to  
8 determine the greatest financial stake. *Inchen Huang v. Depomed, Inc.*, 289 F. Supp. 3d  
9 1050, 1052 (N.D. Cal. 2017). After the court identifies the presumptive lead plaintiff, the  
10 court must determine whether that plaintiff, based on the information it provides, “satisfies  
11 the requirements of Rule 23(a), in particular those of ‘typicality’ and ‘adequacy.’” *Id.* If  
12 it does not, the court analyzes whether the plaintiff with the next-largest financial stake  
13 satisfies the Rule 23(a) requirements. *Id.*

14 Finally, plaintiffs in the class not selected as the presumptive lead plaintiff may  
15 “rebut the presumptive lead plaintiff’s showing that it satisfies Rule 23’s typicality and  
16 adequacy requirements.” *Id.* (citing 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II)). This is  
17 accomplished by demonstrating that the presumptive lead plaintiff either “will not fairly  
18 and adequately protect the interests of the class” or “is subject to unique defenses that  
19 render such plaintiff incapable of adequately representing the class.” 15 U.S.C. §§ 78u-  
20 4(a)(3)(B)(iii)(II)(aa)–(bb). If the court determines that the presumptive lead plaintiff does  
21 not meet the typicality or adequacy requirement, then it must return to step two to select a  
22 new presumptive lead plaintiff and again allow the other plaintiffs to rebut the new  
23 presumptive lead plaintiff’s showing. *In re Cavanaugh*, 306 F.3d at 731. The court repeats  
24 this process “until all challenges have been exhausted.” *Id.* (citation and footnote omitted).

## 25 **II. Motion to Appoint Lead Counsel**

26 Under the PLSRA, the lead plaintiff is given the right, subject to court approval, to  
27 “select and retain counsel to represent the class.” 15 U.S.C. § 78u-4(a)(3)(B)(v). “[T]he  
28 district court should not reject a lead plaintiff’s proposed counsel merely because it would

1 have chosen differently.” *Cohen v. U.S. Dist. Court*, 586 F.3d 703, 711 (9th Cir. 2009)  
2 (citing *In re Cavanaugh*, 306 F.3d at 732, 734 & n.14). “[I]f the lead plaintiff has made a  
3 reasonable choice of counsel, the district court should generally defer to that choice.” *Id.*  
4 at 712 (citation omitted).

## 5 ANALYSIS

### 6 I. Motion to Appoint Lead Plaintiff

#### 7 A. Notice

8 On May 22, 2019, Plaintiff Harari filed this lawsuit. *See generally* ECF No. 1; Mot.  
9 at 7.<sup>1</sup> On that same day, Plaintiff Harrari published notice of the class action in the *Business*  
10 *Wire*, a national business-oriented publication, advising class members of, among other  
11 things, the pendency of the action, the claims made, the purported class period, and the  
12 right to file a motion for appointment as lead plaintiff within sixty days. Mot. at 7; *see also*  
13 Declaration of Stephen R. Bassar (“Bassar Decl.”), Ex. 2, ECF No. 4-2. PERA filed this  
14 Motion on July 22, 2019, *see generally* Mot., within the requisite sixty-day time period  
15 following the notice’s publication. *See* 15 U.S.C. § 78u-4(a)(3)(A)(i)(II).

#### 16 B. Selection of Presumptive Lead Plaintiff

17 As noted above, the PSLRA provides that “the ‘most capable’ plaintiff—and hence  
18 the lead plaintiff—is the one who has the greatest financial stake in the outcome of the  
19 case,” so long as that plaintiff meets the requirements of Federal Rule of Civil Procedure  
20 23. *In re Cavanaugh*, 306 F.3d at 729. Here, PERA alleges it acquired over \$9 million in  
21 PriceSmart stock during the class period and suffered financial losses of over \$2.29 million.  
22 Mot. at 10; *see also* Bassar Decl., Ex. 3. PERA’s financial losses are uncontested and no  
23 other plaintiff seeks appointment as lead counsel.<sup>2</sup> *See* Mot. at 10. The Court thus  
24 concludes that PERA has the largest financial interest in this matter.

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27 <sup>1</sup> For ease of reference, the Court cites to the CM/ECF page numbers stamped at the top of the page.

28 <sup>2</sup> Two other parties filed motions for appointment as lead plaintiffs but subsequently withdrew those motions. *See* ECF Nos. 17, 18.

1 Next, PERA has established that it satisfies the typicality and adequacy requirements  
2 of Rule 23(a). Typicality requires that the lead plaintiff’s injuries be similar to those of  
3 other class members and that those injuries arose out of the same course of conduct as other  
4 class members’. *B.K. ex rel. Tinsley v. Snyder*, 922 F.3d 957, 970 (9th Cir. 2019) (citing  
5 *Parsons v. Ryan*, 754 F.3d 657, 685 (9th Cir. 2014). Here, “PERA, like all of the members  
6 of the proposed class, acquired PriceSmart stock at prices artificially inflated by  
7 [D]efendants’ false and misleading misrepresentations and omissions and were damaged”  
8 in doing so. Mot. at 11. PERA’s claims therefore “arise ‘from the same event or course  
9 of conduct giving rise to the claims of other class members.’” *Id.* (quoting *In re United*  
10 *Energy Corp. Solar Power Modules Tax Shelter Inv. Sec. Litig.*, 122 F.R.D. 251, 256 (C.D.  
11 Cal. 1988)). Thus, PERA’s claims are typical under Rule 23(a).

12 To demonstrate adequacy, PERA must show, “first, that [it] do[es] not possess any  
13 conflicts of interest with the class members and, second, that both plaintiff[] and [its]  
14 counsel will work to ‘prosecute the action vigorously’ with respect to the entire class.”  
15 *Campbell v. PricewaterhouseCoopers, LLP*, 253 F.R.D. 586, 596 (E.D. Cal. 2008)  
16 (quoting *Staton v. Boeing Co.*, 327 F.3d 938, 957 (9th Cir. 2003)). Here, PERA’s interests  
17 “are aligned with the members of the proposed class and there is no evidence of any  
18 antagonism between [PERA’s] interests and those of the proposed class members.” Mot.  
19 at 12. Moreover, PERA’s large financial stake and selection of a law firm “highly  
20 experienced in prosecuting securities class actions” evidences a commitment to prosecute  
21 the action vigorously on behalf of the entire class. *See id.*; *see also* Basser Decl. Ex. 4.  
22 Accordingly, PERA has established it satisfies the Rule 23(a) adequacy requirement.

23 Having determined PERA has the largest financial stake in the case and satisfies the  
24 requirements of Rule 23(a), the Court concludes PERA is the presumptive lead plaintiff.

### 25 ***C. Opposition to the Motion***

26 The presumption that PERA is the lead plaintiff may be rebutted by proof submitted  
27 by a member of the proposed class. *See* 15 U.S.C. § 78u4(a)(3)(B)(iii)(II). Here, no  
28 plaintiff has opposed PERA’s motion for appointment as lead plaintiff. Absent proof that

1 the presumptive lead plaintiff does not satisfy the requirements of Rule 23(a), the candidate  
2 is “entitled to lead plaintiff status.” *See In re Cavanaugh*, 306 F.3d at 732. Therefore, the  
3 Court concludes that PERA is entitled to serve as lead plaintiff in this action.

4 **II. Motion to Appoint Lead Counsel**

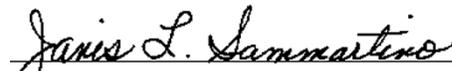
5 PERA requests that the Court approve its selection of Barrack, Rodos & Bacine as  
6 lead counsel. Mot. at 13. The Court has reviewed the firm’s resume and is satisfied that  
7 PERA has made a reasonable choice of counsel. Barrack, Rodos & Bacine has extensive  
8 experience in the prosecution of securities class actions, *see id.* at 13–15; *see also* Basser  
9 Decl. Ex. 4, at 14–18, and it appears the firm will adequately represent the interests of all  
10 class members. Accordingly, the Court approves PERA’s choice of counsel.

11 **CONCLUSION**

12 In light of the foregoing, the Court **GRANTS** PERA’s Motion for Appointment as  
13 Lead Plaintiff and Approval of Choice of Counsel. ECF No. 4. Accordingly, the Court  
14 **APPOINTS** PERA as lead Plaintiff and **APPROVES** PERA’s selection of Barrack, Rodos  
15 & Bacine as lead counsel. This action will proceed in accordance with the pleading and  
16 briefing schedule previously entered by this Court (ECF No. 8).

17 **IT IS SO ORDERED.**

18 Dated: October 7, 2019

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20 Hon. Janis L. Sammartino  
21 United States District Judge  
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